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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

STEPHANIE GORDON,
Plaintiff,

v.

NANCY BERRYHILL, Acting Commissioner
of the SSA,
Defendant.

Case No.: 2:19-cv-01046-GMN-EJY

ORDER

Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis* (Docket No. 1), and has submitted a Complaint (Docket No. 1-1).

I. Application to Proceed *In Forma Pauperis*

Plaintiff filed an application to proceed *in forma pauperis*. Docket No. 1. The application sufficiently shows an inability to prepay fees and costs or give security for them. Accordingly, the application to proceed *in forma pauperis* will be granted pursuant to § 1915. The Court will now review Plaintiff's complaint.

II. Screening the Complaint

When a party seeks permission to pursue a civil case *in forma pauperis*, courts will screen the complaint. *See* 28 U.S.C. § 1915(e). With respect to claims against the Social Security Administration, judges in this District have outlined some basic requirements for a complaint to satisfy the Court's screening. First, the complaint must establish that administrative remedies were exhausted pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced within 60 days after notice of a final decision. Second, the complaint must indicate the judicial district in which the plaintiff resides. Third, the complaint must state the nature of the plaintiff's disability and when the plaintiff claims to have become disabled. Fourth, the complaint must contain a plain, short, and concise statement identifying the nature of the plaintiff's disagreement with the

1 determination made by the Social Security Administration and show that the plaintiff is entitled to
2 relief. *See, e.g., Graves v. Colvin*, 2015 WL 357121, *2 (D. Nev. Jan. 26, 2015) (collecting cases).

3 The Court has reviewed Plaintiff's complaint and finds these elements have not been pled or met.

4 Instead, Plaintiff appears to be alleging civil and criminal claims against the Social Security
5 Administration including a claim under 18 U.S.C. § 4 (Misprision of Felony), 42 U.S.C. § 1320a-
6 7b (Effect of Failure to Carry Out State Plan), 42 U.S.C. § 1981 (a civil rights claim), 5 U.S.C. §
7 552a (a civil code pertaining to Records Maintained on Individuals), and 20 C.F.R. Appendix A
8 to Part 401 (Employee Standard of Conduct).

9 Proceeding *in forma pauperis* is a privilege, not a right. *E.g., Williams v. Field*, 394 F.2d
10 329, 332 (9th Cir. 1968). When a party seeks permission to pursue a civil case *in forma pauperis*,
11 courts will screen the complaint pursuant to federal statute. *See* 28 U.S.C. § 1915(e). In particular,
12 the governing statute provides that courts shall dismiss a case at any time if it determines that, *inter*
13 *alia*, it is frivolous or malicious, or fails to state a claim on which relief may be granted. *See id.*
14 A central function of this screening process is to “discourage the filing of, and waste of judicial
15 and private resources upon, baseless lawsuits that paying litigants generally do not initiate because
16 of the cost of bringing suit.” *Neitzke v. Williams*, 490 U.S. 319, 327 (1989).

17 In civil cases in which the plaintiff seeks to proceed *in forma pauperis*, courts require that
18 the plaintiff comply with the robust authority that complaints must provide sufficient notice of the
19 basis of the claims presented and state a claim for relief. *See, e.g., Watison v. Carter*, 668 F.3d
20 1108, 1112 (9th Cir. 2012). Complaints are subject to the pleading standards set out in Rule 8.
21 *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). Although Rule 8 does not require detailed
22 factual allegations, the complaint must set forth the grounds of the plaintiff's entitlement to relief
23 and may not rest on “labels and conclusions” or a “formulaic recitation of the elements of a cause
24 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Courts must accept as true all well-pled
25 factual allegations contained in the complaint, but the same requirement does not apply to legal
26 conclusions. *Id.* at 679. Mere recitals of the elements of a cause of action, supported only by
27 conclusory allegations, do not suffice. *Id.* at 678. Moreover, where the claims in the complaint
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1 have not crossed the line from conceivable to plausible, the complaint should be dismissed. *Bell*
2 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When a court dismisses a complaint under
3 § 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing
4 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be
5 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).¹

6 Here, Plaintiff fails to state the necessary elements (or allege facts that would support the
7 necessary elements) of her civil claims against the Social Security Administration. Plaintiff cannot
8 pursue a claim based on criminal statutes. The Court therefore will dismiss Plaintiff's Complaint
9 without prejudice for the Plaintiff to file an amended complaint.

10 If Plaintiff chooses to file an amended complaint, the document must be titled "Amended
11 Complaint." The amended complaint must contain a short and plain statement of the grounds for
12 the Court's jurisdiction. *See* Fed. R. Civ. P. 8(a)(1). Additionally, the amended complaint must
13 contain a short and plain statement describing the underlying case and Defendant's conduct that
14 constitutes discrimination. *See* Fed. R. Civ. P. 8(a)(2). Although the Federal Rules of Civil
15 Procedure adopt a flexible pleading standard, Plaintiff still must give the Defendant fair notice of
16 the Plaintiff's claims against it and Plaintiff's entitlement to relief.

17 Additionally, Plaintiff is advised that if he files an amended complaint, the original
18 complaint (ECF No. 2) no longer serves any function in this case. As such, the amended complaint
19 must be complete in and of itself without reference to prior pleadings or other documents. The
20 Court cannot refer to a prior pleading or other documents to make Plaintiff's amended complaint
21 complete.
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23 IT IS THEREFORE ORDERED that Plaintiff's Application for Leave to Proceed *In Forma*
24 *Pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to pay the filing fee in this
25 action. Plaintiff is permitted to maintain this action to conclusion without the necessity of
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27 ¹ In cases in which the plaintiff is proceeding *pro se*, the Court liberally construes her pleadings.
28 *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se*
pleadings is required after *Twombly* and *Iqbal*). Plaintiff is represented by an attorney in this case.

1 prepayment of any additional fees or costs or the giving of a security for fees or costs. This Order
2 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at
3 government expense.

4 IT IS FURTHER ORDERED that the Clerk of the Court must file Plaintiff's Motion to
5 Expedite Benefits (ECF No. 1-1).

6 IT IS FURTHER ORDERED that the Motion (which the Court is treating as a complaint)
7 is DISMISSED without prejudice for failure to state a claim upon which relief can be granted, with
8 leave to amend. If Plaintiff chooses to file an amended complaint, Plaintiff must file the amended
9 complaint within 30 days from the date of this Order. Failure to comply with this Order may result
10 in a recommendation that this action be dismissed.
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12 DATED: August 16, 2019.

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15 ELAYNA J. YOUCHAH
16 United States Magistrate Judge
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